

## **REMARKS**

In response to the final Office Action dated May 26, 2009, the Assignee respectfully requests continued examination and reconsideration based on the above amendments and on the following remarks.

Claims 1-2, 4, 6, 8, 10-11, 13, 15, and 17-24 are pending in this application. Claims 2, 4, 17, and 20-24, however, were withdrawn from consideration by restriction. Claims 3, 5, 7, 9, 12, 14, and 16 have been, or previously were, canceled without prejudice or disclaimer.

### **Rejection of Claims under § 103 (a)**

Claims 1, 6, 8, 10-11, 13, 15, and 18-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over AU Patent No. 200223,231 to Nagle *et al.* in view of U.S. Patent 6,042,080 to Shepherd *et al.* and further in view of U.S. Patent 6,290,377 to Hulse.

The proposed combination of *Nagle*, *Shepherd*, and *Hulse* “teaches away” and cannot support a *prima facie* case for obviousness. The M.P.E.P. expressly explains several situations in which a reference teaches away, including when a proposed modification “render[s] the prior art unsatisfactory for its intended purpose” or when the proposed modification “change[s] the principle of operation of a reference.” See M.P.E.P. § 2145 (X)(D). If *Nagle* and *Shepherd* are combined with *Hulse*, as the Office proposes, then both *Shepherd’s* and *Hulse’s* principle of operation must be impermissibly changed. Indeed, much of *Shepherd’s* and *Hulse’s* teachings must be **eliminated** to make the Examiner’s proposed combination. The proposed combination of *Nagle* with *Shepherd* and *Hulse* cannot support a *prima facie* case for obviousness, so the Office is required to remove the § 103 (a) rejection of these claims.

As the Assignee has previously explained, *Nagle*, *Shepherd*, and *Hulse* teach a telescopic cable support. The proposed combination, however, has a magnetic base, as *Shepherd* explains. If *Nagle*, *Shepherd*, and *Hulse* are combined to reject the claims, then *Shepherd’s* magnetic

based must be changed to include “an adhesive that adheres the base to the attachment surface,” as the independent claims recite. Indeed, *Shepherd’s* entire teaching of a magnetic base must be **eliminated** to reject the claims. The patent laws, however, forbid these changes.

The proposed combination of *Nagle* with *Shepherd* and *Hulse* requires even more changes. *Hulse* uses pneumatics to raise and lower a telescopic mast. *Hulse* uses a mechanical rack and pinion system to change the angle of the mast, but pneumatics are used to extend and retract the length of the mast. As *Hulse* explains, “it is a principle object of the present invention to provide a pneumatically telescoping mast.” *Id.* at column 3, lines 52-54 (emphasis added). Air from an air compressor is supplied to a solenoid, which is used to extend and retract the mast. *See id.* at column 5, lines 16-24. *Hulse* goes on to describe a mechanical “rack and pinion system” that “operates to raise mast 10 from its horizontal position.” *Id.* at column 6, lines 53-55 (emphasis added). The rack and pinion system “allows the mast to be securely maintained at any of a plurality of angles between the generally horizontal position and the generally vertical position.” *Id.* at column 7, lines 1-5 (emphasis added). If *Nagle*, *Shepherd*, and *Hulse* are combined to reject the claims, then *Hulse’s* pneumatic system must be changed to include “at least one mechanical drive mechanism connected to the final segment of the telescopic segments and operatively coupled to respond to the control system, the at least one mechanical drive mechanism configured to at least one of extend and retract the final segment” (emphasis added). Indeed, *Hulse’s* entire pneumatic system, including the air compressor and solenoid, must be **eliminated** to reject the claims. The patent laws, however, forbid these changes.

*Nagle*, *Shepherd*, and *Hulse* thus teaches away. If *Nagle* and *Shepherd* are combined with *Hulse*, as the Office proposes, then both *Shepherd’s* and *Hulse’s* principles of operation must be impermissibly changed. Indeed, much of *Shepherd’s* and *Hulse’s* teachings must be **eliminated** to make the Examiner’s proposed combination. . The patent laws, however, forbid changing a principle of operation to support a *prima facie* case for obviousness. The § 103 (a) rejection, based on a proposed combination of *Nagle*, *Shepherd*, and *Hulse*, must fail. The Office is required to remove the § 103 (a) rejection of these claims.

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized flourish at the end.

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